

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75-1107

To be argued by
MURRAY RICHMAN

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In The
UNITED STATES COURT OF APPEALS
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

JAMES ANGLE, Y,

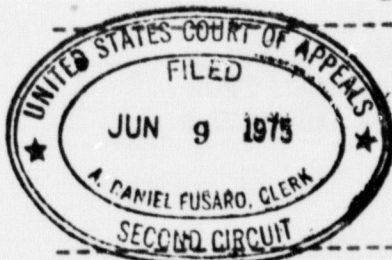
Appellant,

and

ERNEST CORALLUZZO, a/k/a Jake, ALBERT ROSSI, JR.,
JOSEPH DELUCA, ROBERT BROWNING, a/k/a/ Bobby Gooch,
FRANKLIN FLYNN, ROGER SILVERIOS, a/k/a/ Ricky, a/k/a
Doug, ANGELO IACONO, JAMES CAPOTORTO, JOSEPH
CAMPERLINGO, RAYMOND THOMPSON, ANGELO BERTOLOTTI,
WEBSTER EUGENE BIVENS, a/k/a/ Gene, VINCENT ARTUSO,
STEVEN CREA, JOSEPH LEPORE, GERALD RUBIN, a/k/a
Jerry, CHARLES GUIDA, a/k/a Charlie Chase, PETER
COSME, a/k/a Inky, PHILLIP CIMMINO, a/k/a Philly Rags,
ANTHONY DePASQUA, a/k/a Boots, THOMAS VASTA,
MARIA MARRERO, SUSANA SHERMAN, LOUIS GUERRA,
ANITA CORALLUZZO, CATHY SPANGLER and NATHANIEL
ARNOLD, a/k/a Willie Lump Lump,

Defendant.

Appeal from the United States District Court for the Southern
District of New York



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APPELLANT'S BRIEF

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QUESTIONS PRESENTED

1. Whether the evidence was insufficeint as a matter of law to convict the Appellant of the crime of conspiracy.

2. Whether the Court erred in denying the Appellant's motion for a severance pursuant to Rules 8(b) and 14 of the Federal Rules of Criminal Procedure.

3. Whether the evidence adduced at trial failed to establish a single conspiracy, but rather offered proof of multiple conspiracies some of which were totally unrelated to the Appellant which was prejudicial and denied the Appellant a fair trial.

4. Whether the Government's introduction of the Mengrone tapes with knowledge of their falsity constituted governmental misconduct which violated due process.

5. Whether the trial Court abused its discretion by permitting the jurors to bring notes into the juryroom during deliberation over defense objections.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
Docket No. 75 1107
-----X

UNITED STATES OF AMERICA, :

Appellee, :

-against- :

JAMES ANGLE, :

Appellant. :

-----X
On Appeal From The United States
District Court For The Southern
District of New York
-----X

BRIEF FOR THE APPELLANT

STATEMENT PURSUANT TO RULE 28 (3)

PRELIMINARY STATEMENT

This is an appeal from a judgment of the United States District Court For The Southern District of New York (The Honorable Robert L. Carter Presiding), rendered on March 18, 1975, wherein Appellant, JAMES ANGLE, was convicted after trial by jury, of one count of conspiring to violate 21 U.S.C. 812, 841(a)(1) and 841(b)(1)(A). The Appellant was sentenced to the care and custody of the Attorney General for five (5) years with a special parole term of three (3) years to commence upon expiration of the term of imprisonment.

STATEMENT OF FACTS

A nine count indictment was filed charging the Appellant, JAMES ANGLE, in Count One thereof with conspiring to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code to unlawfully, intentionally and knowingly distribute and with intent to distribute Schedule I and II narcotic drug controlled substances. The Appellant was further charged in Count Two with having distributed a Schedule II controlled substance, to wit, approximately twelve (12) kilograms of cocaine.

The indictment alleged that from on or about the 1st day of January, 1973, and until the filing of the indictment, the Appellant, in conjunction with the other named defendants and co-conspirators, conspired to facilitate the distribution and possession with intent to distribute Schedule I and Schedule II narcotic drug controlled substances.

THE TRIAL

I. THE PROSECUTION CASE

A. ALBERT J. ROSSI

Rossi testified that he received a medical discharge under honorable conditions from the United States Marine Corp in February, 1966, and that his conditions were 75% nerves and 25% gunshot wounds. He further testified that in 1966 he was arrested

on an assault charge and was not convicted on the charge (144).^{*} Mr. Rossi further testified that in 1967 he was arrested on a second assault charge and pled guilty to that charge and received a sentence of five (5) years probation (145). He further testified that he struck his victim in that assault in the eye with a tire iron.

Mr. Rossi identified the Appellant, James Angley, in Open Court (149). Mr. Rossi then proceeded to identify the other defendants who were seated in the Court Room. Mr. Rossi testified that in 1968 he was arrested for uttering a false instrument and received a \$150.00 fine. In 1969, he was involved in an armed robbery in the Riverdale Section of the Bronx where a woman was shot in the shoulder, a charge he was never arrested for (154). He was then involved in another armed robbery in 1969-70 that took place on Cruger Avenue and Allerton Avenue in the Bronx, a crime where Mr. Rossi was again not arrested (155). He was again involved in another armed robbery in 1973 of a Sealtest Milk Company in Queens and was not arrested for that charge. He further testified that in 1973 he was involved in an attempted murder of an individual by the name of Sal Ripulone, and that Mr. Ripulone never filed a complaint against Mr. Rossi for the attempted murder (156). He testified that he engaged in three transactions with Mr. Trabuchi and then began working for Angelo and Tony Ricco by purchasing narcotics from them, the narcotics being heroin and the quantities being in the amount of ounces (157). He testified that he was working with other individuals during that time.

^{*}Numbers refer to pages of the trial transcript.

✓ 75
He further testified that in August of 1971 he began working with an individual by the name of James Rizzieri and worked with Mr. Rizzieri selling and buying narcotics from that time in 1971 until the beginning of 1973. He testified that he was engaged in heroin trade in kilogram quantities (158). Mr. Rossi further testified that on January 8, 1975, he pled guilty to Indictment 74CR 5 charging him with conspiring to violate the Federal Narcotics Laws and has not been sentenced (158). He further testified that he is under indictment in Bronx County, State of New York, for the sale of a narcotic drug, a charge for which he has not pled to date (159). He further testified that he is currently under indictment in New York County, State of New York, for an additional narcotics sale, another matter in which he has not yet pled (158-160).

Mr. Rossi testified that in the fall of 1972, he was approached by an individual by the name of John DiSalvo. Rossi testified that DiSalvo informed him that he wanted an eighth of a kilogram of heroin. Mr. Rossi supplied the narcotics in the fall of 1972 (160). Mr. Rossi further testified that Mr. DiSalvo introduced him between September and December, 1972, to Ernie Coralluzzo, Joseph Ariello and another individual by the name of Angelo, and other individuals unknown (163). At that time, Mr. Rossi testified that he had a conversation with Mr. Coralluzzo wherein Mr. Coralluzzo stated that the heroin supplied by Mr. Rossi was not in pure form, and Mr. Rossi replied that Mr. DiSalvo did not want pure heroin, but rather he wanted an eighth of a

kilogram of heroin that could be hit five times. However, Mr. Rossi informed Mr. Coralluzzo that he would provide him with an extra half ounce of heroin to satisfy his complaint. Mr. Rossi testified that he began to associate with Mr. Coralluzzo on a regular basis after that meeting (164). Mr. Rossi further testified that in January or February of 1973, Mr. Coralluzzo introduced Mr. Rossi to Mr. Louis Guerra wherein Mr. Guerra informed Mr. Rossi and Mr. Coralluzzo that he was awaiting a shipment of cocaine, and Mr. Rossi and Mr. Coralluzzo stated that they would like to purchase some of it (165).

Mr. Rossi then testified that in March of 1973, he went to Florida where he met an individual by the name of Mr. Samuels (167). In a conversation with Mr. Samuels, Mr. Rossi was informed that the said Mr. Samuels knew of an individual who wished to purchase two kilograms of cocaine and, as a result of that conversation, Mr. Rossi called Mr. Guerra and Mr. Guerra said he could provide the cocaine. Mr. Rossi informed Mr. Guerra that he was sending an individual by the name of James Lump Lump Lombardo from Florida to New York to pick up the cocaine and, when Mr. Lombardo returned from New York City, he had in his possession two kilograms of cocaine (166-169). Mr. Rossi testified that he did not sell the cocaine in Florida, but brought it back to New York and returned the cocaine to Mr. Guerra (169). Mr. Rossi then testified that as a result of this trip to Florida, Mr. James Capotorto and Mr. Ray Thompson arrived in New York and a meeting was held at the home of Mr. Salvatore Ripulone (170). Mr. Rossi said that Mr. Capotorto and Mr. Thompson wanted to purchase a kilogram of cocaine and they showed Mr. Rossi money for the purchase. This occurred in June of 1973. He said that this

money was the total sum provided by four individuals, namely, Mr. Capotorto, Mr. Thompson, Mr. Bertalotti and Mr. Camperlingo. The money totaled \$17,000.00 to \$19,000.00 and, as a result of the meeting, Mr. Rossi contacted Mr. Guerra who said he would be able to get the kilogram of cocaine. Mr. Guerra delivered the cocaine and additional cocaine to Mr. Rossi's mother's house, where the individuals agreed to take both kilograms of cocaine and paid Mr. Coralluzzo and Mr. Rossi their money which was divided \$3,000.00 a piece to Mr. Coralluzzo and Mr. Rossi and the balance to Mr. Guerra (170-175). Mr. Rossi then testified that sometime in June, 1973, he went to Florida and contacted Mr. Capotorto and requested the money for the second kilogram of cocaine (177). Mr. Rossi testified that he was paid \$5,000.00 by Mr. Thompson for the second kilogram of cocaine.

Mr. Rossi testified that in July or August, 1973, at the home of Mr. Charles Guida (179) he had a meeting with Mr. Guida and Mr. Eugene Bivens. Mr. Rossi testified that Mr. Bivens agreed to attempt to sell a quarter of a kilogram of cocaine and that he was told by Mr. Guida that the cocaine was delivered to Mr. Bivens (180).

Mr. Rossi said that in February or March, 1973, he obtained 600 pounds of manita that he would purchase from a doctor who wanted to sell it at \$125.00 a pound. Mr. Rossi felt this was a ridiculous figure. He then decided along with Mr. Coralluzzo that he would rip off the manita and they then contacted Mr. Thomas Vasta and paid him \$1,000.00 to participate in the robbery. Mr. Rossi then testified that the robbery occurred and that the manita was sold to Carlisle the Blind Man for \$6,000.00

and that Mr. Vasta was paid the \$1,000.00 and the balance divided between Mr. Rossi and Mr. Coralluzzo (182). Mr. Rossi then testified that in July or August of 1973, he became acquainted with a gentleman by the name of Angelo Iacono in Florida at the B & G Lounge and at the Trojan Lounge where conversations were held. Present at that conversation were James Capotorto and Mr. Robert Browning, as well as Mr. Rossi's wife and sister-in-law. Mr. Rossi testified that Mr. Iacono informed him that he was receiving 2500 pounds of Colombian marijuana and wanted to know if Mr. Rossi would be interested in purchasing it. At that meeting Mr. Iacono also informed Mr. Rossi that he was partners with an individual by the name of Franklin Flynn who had connections in South America to get vast quantities of cocaine. Mr. Rossi informed Mr. Iacono that he was interested in both the marijuana and cocaine (184-187). Mr. Rossi then testified that he had a subsequent meeting with Mr. Franklin Flynn, Mr. Angelo Iacono, Mr. Roger Silverio and Mr. James Capotorto, wherein Mr. Flynn informed him that he was new in the narcotics business, and he would not know how to sell narcotics. Mr. Rossi informed Mr. Flynn that he would buy all the cocaine that Mr. Flynn could obtain (187-188). Mr. Rossi testified that at this time he was a fugitive from justice in that he had violated his probation and was living in Florida as a result thereof (188).

Rossi then testified that he saw Mr. Iacono after the Florida meeting in the Kennedy Airport in New York, as a result of a phone conversation from Franklin Flynn wherein Mr. Rossi was informed that Mr. Iacono was coming in with heroin and cocaine. This occurred in August or September, 1973, and Mr. Rossi had a

conversation with Iacono at the Airport, wherein Mr. Iacono informed Mr. Rossi that he had cocaine in his possession and Mr. Rossi then took Mr. Iacono to the Van Cortlandt Motor Inn in Riverdale, New York, where the cocaine was tested (190-191). It is Mr. Rossi's testimony that sometime in September, 1973, he was contacted by telephone by Franklin Flynn and was told by Mr. Flynn that he had a green light to go to Florida and pick up cocaine. Mr. Rossi testified that as a result of that phone call he went to Florida with Ernie Coralluzzo, Louis Lepore, Robert Browning, Gary Pearson, James Angley and Appellant, Joseph DeLuca. His testimony is that all the individuals went to Florida together (191-193).

Mr. Rossi then testified that immediately prior to going to Florida and immediately after the phone call, "I called up Ernie and Ernie and I called up the rest of the individuals that I mentioned and we told them--well, we had spoken about this prior." He stated that he told Ernie that the banker told him that the goods were in and they should come down to Florida to pick them up and that Mr. Coralluzzo stated that he would get in touch with other individuals to come down to Florida. He further stated that Mr. Coralluzzo named the individuals and those names were Robert Browning, Gary Pearson, Louis Lepore, James Angley and Joseph DeLuca (194-195).

Mr. Rossi stated that a meeting was held at his mother's house and present at that meeting were Ernest Coralluzzo, Robert Browning, Joseph DeLuca, Louie Lepore, James Angley and Gary Pearson. That a conversation occurred at that meeting where Mr. Coralluzzo and Mr. Rossi told everybody that they were going

down to Florida to rip off cocaine, but everybody was asking questions, such as, who is going to do what, how is it going to take place and, "what are we going to do for artillery?" Mr. Rossi replied that he told everybody that they had artillery. He further testified that everybody was to receive for their services \$7,500.00 except Joseph DeLuca. Mr. Coralluzzo told Mr. DeLuca that he would receive \$5,000.00. Mr. Rossi testified that immediately after the meeting, everybody went to LaGuardia Airport where Mr. Rossi bought seven tickets, but did not recall the names in which the tickets were purchased, but did remember the names of Russo, H. Levine and other names (196-198). Mr. Rossi then testified that all of the individuals above-named were on the plane and flew to Florida on September 22, 1973 (201).

Mr. Rossi testified that after his arrival in Florida Gary Pearson, Joseph DeLuca, Louis Lepore and James Angley registered at the Hotel Diplomat and that he, Mr. Coralluzzo and Louis Lepore went to the Hemispheres Hotel.

Mr. Rossi then testified that a meeting was held with Franklin Flynn on the date of arrival in the main lobby of the Hotel Diplomat and he further stated that Ernest Coralluzzo, Gary Pearson and Louis Lepore were present (202). Mr. Rossi further stated that at that meeting Mr. Flynn gave a sample of the cocaine to Mr. Rossi and a second meeting was arranged (203). The following day another meeting was held between Mr. Rossi, Mr. Coralluzzo, Mr. Pearson, Mr. Lepore, Mr. Flynn, Mr. Silverio

and Mr. Iacono (204). After the meeting, Mr. Rossi, Mr. Lepore, Mr. Pearson and Mr. Coralluzzo went back to the Hemispheres Hotel and checked out. Rossi then testified that he and the others went to the Hotel Diplomat with their luggage where DeLuca and Browning were staying (205). Angley had already returned to New York because of "some type of business to do with trucks", Rossi testified.

Franklin Flynn and Angelo Iacono arrived at Room 1049 at the Diplomat and Flynn informed Rossi that he had the goods. At that time, Rossi, Coralluzzo, Browning, Iacono, Roger Silverio and Flynn were present (208). Browning was introduced as the chemist and, as soon as Rossi saw the cocaine, guns were drawn and they announced that it was a stickup (208).

Then Rossi, Coralluzzo, Louis Lepore and Gary Pearson went to a waiting car. Rossi said that he was informed that Browning and DeLuca had tied up the three individuals (209). Rossi and Coralluzzo carried the cocaine (210). DeLuca and Pearson arrived at the car (211) and then everyone headed to the Holiday Inn in Fort Lauderdale, where a chauffeured limousine was waiting. Next, they went to West Palm Beach where they dropped off Browning, DeLuca and Pearson in one hotel. Rossi, Coralluzzo and Lepore went to another hotel (212).

The next day Rossi called Marilyn Greco and told her that six individuals were coming to New York and that she should have a chauffeured limousine waiting upon their arrival (212). The suitcases with the cocaine were checked at the airport with Skyline (213). Upon arriving in New York, Rossi told Louis Lepore,

DeLuca, Pearson and Browning to bring the suitcases to his mother's house (213). Rossi, Coralluzzo, Cath Spangler and Marilyn Greco took the chauffeured limousine to her house at 2007 Narragansett Avenue, Bronx, New York. They waited for DeLuca and the others to arrive (214). Rossi then transferred the cocaine again and proceeded to 113-115 Heights Drive (in Yonkers) (214). Rossi went there with Coralluzzo, Spangler, and Greco. Spangler and Greco bought a sealing machine and plastic bags (215). Rossi called Gerald Rubin who, upon arrival, tested the cocaine and pronounced it the "best cocaine he had ever seen" (216). Rubin was given an ounce of cocaine for his trouble. Spangler, Greco and Coralluzzo assisted Rossi in packaging the cocaine (219). The cocaine was placed in 26 or 28 15 ounce packages. Rossi then took ten packages and brought them to the home of Coralluzzo's mother (222).

Rossi then testified that instead of money Pearson was paid with 13 or 14 ounces of cocaine (223). Lepore received four to five thousand in cash and the rest in cocaine. That everyone (except Angley) received \$500.00 at West Palm Beach. Browning received the rest "in goods". Rossi then testified as follows: "Joseph DeLuca, we gave him--I don't know--two, three thousand dollars and the rest in goods." (224). When asked if Angley had been paid, Rossi replied: "I believe we gave him three or four ounces of cocaine".

The next week Gerald Rubin told Rossi that he could move the whole shipment of cocaine (228). Rubin told Greco that a Mr. DiGeorgio would pick up the cocaine and he was given

2 15 ounce packages. The next day Rubin gave Rossi \$20,000.00 for one kilo (actually 30 ounces) (230). Three days later, Rossi gave DiGeorgio another 30 ounces. DiGeorgio was unable to move the goods and he returned them. Rossi thought the drugs had been "touched" (diluted), but Rubin denied it (232).

In late September or early October, Rossi met with a Mr. Cimmino^{*} (232). The purpose of the meeting was to move kilogram quantities of cocaine. The cocaine was Chilean in origin. Cimmino and George Touturian entered Raffaella's Restaurant on West Houston Street and spoke about cocaine with Rossi. Cimmino and Touturian referred to each other as "partners". The price was \$23,000.00 for 30 ounces.

The following night Rossi was at the Venezia de Notte Restaurant with his wife and Ernest and Anita Coralluzzo. Rossi instructed Joseph DeLuca to come to the Venezia de Notte (236). When DeLuca arrived, Rossi got into DeLuca's car and drove to 113-115 Heights Drive. Rossi went upstairs and got two 15 ounce packages of cocaine. Rossi told DeLuca that Lepore was at Burke Avenue and Gun Hill Road (237). DeLuca was told to give Lepore the packages and inform Rossi when he had done so. The next day Lepore gave Rossi \$10,000.00 and told him the other \$10,000.00 would come tomorrow (238). Rossi and Coralluzzo split the money \$5,000.00 each. Lepore gave Rossi and Coralluzzo the other \$10,000.00 on the following day.

In October, Cimmino told Rossi he wanted to cut

*Cimmino was acquitted of conspiracy charges after trial in this case.

out the middleman and get the goods for \$20,000.00 directly (241). Rossi, Coralluzzo, Touturian and Cimmino met at Tuckahoe Road in Yonkers. Cimmino said he could still move the goods, but Rossi didn't sell him any more (242).

Rossi next saw Cimmino when Cimmino called him and told him he had some females he wanted Rossi to meet (242). Rossi and Coralluzzo went to 77th Street & East River Drive and met Susana Sherman, Maria Marrero and one other girl.

In late September or the beginning of October, 1973, Rossi and Coralluzzo met with Mr. Guerra in the Bronx and sold cocaine to him (244).

In August, 1973, Rossi gave 50 pounds of marijuana to Mr. Guida (245). Guida received 1/4 of a kilo of cocaine for Bivens^{*}, but Rossi never received payment (249). Peter Cosme^{**} at Inky's Fly received a sample in March or April, 1973, but had no further dealings with Rossi (250).

After the September Miami trip, Rossi met with Pearson at Marilyn Greco's house (250). Pearson said he could move half a kilo. Pearson said Cosme wanted half a kilo. Coralluzzo and Rossi gave Pearson 15 ounces (251). Pearson returned with \$10,000.00 and said that Cosme had bought it.

Rossi met with Vasta on October 24, 1973, at a birthday party at the Torreador Lounge in the Bronx (253). Vasta said he had a customer for 2 or 3 kilos of cocaine. Rossi told Vasta that he never had any cocaine then or before.

* Acquitted of conspiracy charges after trial in this case.

** A named defendant whose case was severed.

On October 25, 1973, Rossi learned that an arrest warrant had been issued for him by the Bronx District Attorney's Office (254). As a result, Rossi fled the jurisdiction. The next day Rossi testified that he called Angley and asked him to pick up Coralluzzo and himself and they went to Riverdale. Rossi called Graco and told her that Spangler and Marrero were coming to her house to pick up the cocaine and move it to another location (255). Rossi made arrangements to leave New York. Rossi testified that he, Coralluzzo and Angley counted out the packages of cocaine (257). The cocaine was stored in the bathroom so that it could be dumped, if necessary (258). Rossi told Sally Goose^{*} that "our whole life was in the valise" and not to give it to anyone unless he heard from Rossi or Coralluzzo (259).

Rossi testified that he, Coralluzzo, Spangler and Angley went to the Jersey shore. They stayed over night at the Holiday Inn on the Garden State Parkway (260). Rossi stated that Angley brought the cocaine to Sally Goose either before or after they left.

Rossi testified that he still engaged in the narcotic trade through Angley, Marrero and Susana Sherman, during the period that Rossi was a fugitive from October 25, 1973 until November 18, 1973, when he surrendered (267). Rossi and Coralluzzo knew they needed money and lawyers. They instructed Angley about narcotic activities and he was their "eyes and ears" (267). Angley told them that he sold an eighth (of a kilo)

* Sally Goose is Mr. Coralluzzo's brother-in-law.

for \$2500.00, \$2700.00 and brought them the money. Rossi stayed at Louis Lepore's house for a few days (271).

Rossi further testified that Angley gave Anita Coralluzzo \$7,000.00 or \$8,000.00 which Anita brought to Rossi and Ernest Coralluzzo at the Red Coach Inn in New Jersey. After Rossi surrendered in the Bronx, he made bail. He and Coralluzzo sold a quarter of a kilo to Carey using an intermediary named Sal (280). Rossi stated that he gave it to DeLuca who met Carey. Carey wanted the cocaine on consignment, so Rossi called off the deal (282). The next day Rossi instructed DeLuca to give the package to Sal and that Sal would deliver it to Spangler's apartment in Tuckahoe (285).

Rossi described a proposed deal with Arnold with Guida as an intermediary (288). Next, Rossi described a proposed deal with Crea and Artuso in September (293,295). Crea could not produce enough money (297). In December, Rossi stated that Crea and Artuso paid \$10,000.00 for two kilos given to Artuso. Artuso agreed with Coralluzzo to purchase two more kilos for \$30,000.00 (303a). Coralluzzo informed Rossi that he gave DeLuca the first two kilos to deliver to Artuso. The \$10,000.00 was split, \$1,000.00 to Crea for an antecedent debt, Coralluzzo \$4,000.00, and Rossi \$5,000.00 (305).

In December, Rossi was arrested by the United States Government and posted \$25,000.00 bail (306). In December, Rossi met with Guida in a social club in the Bronx. Previously on that day, Coralluzzo, DeLuca and Angley came to the club. Coralluzzo

told Rossi that Angley had a customer for a kilo of cocaine (308). Rossi told Coralluzzo to forget it. Nevertheless, Guida assisted in the attempted sale using Rossi's 1973 Thunderbird with Angley in another car (309). Police or DEA cars closed in, but Guida and Angley escaped (311). Rossi wanted to remove the cocaine from the Bronx. Marilyn Greco and her son took care of this (312).

Rossi's participation in the alleged conspiracy ended on December 18, 1973, when he surrendered to the DEA (317). Rossi further testified about a prior trip to Florida involving Bertolotti, Camperlingo, Thompson and Capotorto (321). Rossi discussed how he brought 500 or 600 pounds of marijuana to New York by camper (329). The splitup of the marijuana was as follows: Louis Lepore, 100 lbs.; Coralluzzo, 200 lbs.; Louis Guerra, 100 lbs.; and Gene Bivens, 50 lbs. (333).

Rossi met with Frank Lucas in late August or early September. Rossi, Mengrone, Lucas and Morris* were present. Lucas wanted to buy ten kilos of heroin. Lucas gave Mengrone between 29 and 30 thousand in small bills (341-342). When Rossi saw the small denomination, he decided to rip off Lucas, because he didn't think Lucas could get the \$300,000.00 purchase price. Rossi had Browning prepare Aunt Jemima pancake mix to get to Lucas (344).

In March or April, 1973, Rossi met Frank Matthews in Manhattan (347). Rossi told Matthews that he understood Matthews

* An associate of Lucas.

had \$1,150,000.00 and wanted to buy 50 kies of heroin (348). Matthews could only come up with \$250,000.00. Harold Harrison, a Matthews' associate, brought another \$120,000.00. Coralluzzo said "We are going to beat them." Rossi protested the rip off. (349). James Capotorto was held hostage by Matthews and Rossi eventually had to return the money (350).

Rossi acknowledged that he received money (\$1500-\$1600) from the Drug Enforcement Administration and \$500.00 from the FBI since he became an informer. Rossi asserted that he had not received any promise of immunity except that the sentencing judges would be advised of his cooperation (361).

B. ROSSI'S CROSS EXAMINATION

Rossi admitted to use of cocaine and marijuana (373) and that he lied to his probation officer about his drug use (378). Rossi stated that he dealt in narcotics as early as 1970. (419-420). Rossi admitted to the Sealtest robbery in March, 1973. (426). Rossi asserted that his parents knew his dealings were illegal but not that drugs were involved. Rossi further stated that he contemplated suicide in June or July, 1974, after becoming an informer. Rossi admitted that he continued selling drugs even after he started cooperating with the DEA (453). Rossi stated that he would have become a fugitive if he could have made bail (460).

Rossi further testified that the cocaine in the camper was independent of the Flynn "rip-off" transaction (550-551).

Likewise the marijuana transaction was unrelated to the Flynn rip-off (553).

Rossi testified that none of the defendants would raise the bail money for him (598). Rossi admitted to being know as "Albie", "Al" and "Crazy Al", and that he was using, prior to trail, medication consisting of 1500 milligrams of chloral hydrate and 100 milligrams of phenobarbital.

Rossi asserted that he and Coralluzzo were the center of the alleged narcotics conspiracy (617). Rossi stated that the attempted sale to Serrano involving Rossi's car was made without his approval (622).

Rossi acknowledged that Angley was not present at the Flynn "rip-off" meeting nor at the robbery itself. (624).

Rossi stated that in September, 1973, Angley opened a trucking business with Coralluzzo which Rossi knew about (628,629). Rossi stated that after that time he and Coralluzzo were not together as often (629).

Rossi further testified that he could not remember who he negotiated with for the heroin he was to have sold Lucas (681). Rossi stated that he didn't think he (Rossi) and Coralluzzo were partners anymore because they had been feuding (683,684). Rossi stated that from the beginning of 1973 until September, 1973, he had been involved in a series of ordinary robberies where he did not intend to sell any drugs (702,703).

Rossi further testified on cross-examination that DeLuca was not present at any of the meetings in Florida with Flynn (730).

That Coralluzzo, not Rossi, contacted the others who were to go to Florida (735). Rossi testified that Coralluzzo told DeLuca, "if you want to come down to Florida and make money, there is \$5,000.00 in it for you." (742).

Rossi stated that Coralluzzo sent DeLuca to see him at the Tombs in January, 1974 (802). That Rossi was annoyed at Coralluzzo for not returning his phone calls (803).

Rossi admitted that when Anita Coralluzzo gave him money from Angley that she did not say it came from a drug transaction (881). Rossi further testified that Angley's trucking business was, to his knowledge, his own.

C. GARY PEARSON

Pearson testified that he was 29 years old, in the Air Force from 1964 to 1968, received an honorable discharge (906,907). Subsequently, from 1968 to 1971, he worked as an air controller with the FAA (907). In 1971, Anthony Zinzi introduced him to Ernest Coralluzzo, Johnny DiSalvo, Vincent Artuso and Steven Crea (908).

In 1971, Pearson was arrested on charges of possessing counterfeit American Express travelers' checks (909). He was sentenced in Queens County to 0 to 3 years, and was released on parole in December, 1972 after thirteen (13) months (909).

On October 25, 1973, Pearson was arrested on A Felony and C Felony Charges. He pled guilty to the C Felony with a promise that he received no more than 10 years (910). Pearson was not sentenced and had his bail reduced to recognizance, but was

not released then because of the parole violation.

In September, 1973, Coralluzzo called Pearson. Pearson testified that: "Ernie got on the phone and asked if I would like to take a trip to Florida, that I would be guaranteed \$10,000.00 for taking the trip.

I agreed to it. He told me it would only be for a day and to wear a suit and to meet at Anthony Zinzi's girlfriend's house on Matthews Avenue at 7:30 in the evening."

A car picked him up. Angley, DeLuca and Browning were in the car. Pearson had never met Angley or DeLuca before (914). The car proceeded directly to LaGuardia, Eastern Airlines Terminal where Rossi gave him a coach ticket (915). During the flight, Pearson went up to first class where Coralluzzo and Rossi were, and they told him "what was going to happen in Florida".(916). Ernie and Albert said: "We're going there to take off a coke deal that's in Florida". They said Pearson might have to take \$7,500.00 instead of \$10,000.00 (917).

Pearson testified that Rossi told Browning to give Pearson a driver's license and to register at the Hotel Diplomat as Robert Zadeh (917). He took two adjoining rooms; Pearson and Bobby (Gooch) Browning in one and Angley and DeLuca in the other. Rossi, Coralluzzo and Lepore stayed at the Hemispheres (918).

Later that night, Albert and Ernie distributed .38's to each of the men (919). However, Pearson did not know whether Bobby Gooch and Joseph DeLuca were present (920).

The next day Rossi, Coralluzzo and Lepore returned to

the Diplomat and said there was a 7:30 appointment with Franklin Flynn and his party (921). Around 7:00 P.M. Pearson, Browning, Rossi, Coralluzzo and Lepore went to Flynn's bar.

James Angley was preparing to return to New York (922). DeLuca was not present either.

At the meeting with Flynn, Rossi said he wanted the delivery that night. Angelo Iacono complained about the lack of security (923). Rossi hit Iacono with a pool rack to let him know he meant business. Rossi was passing himself off as the middleman (924). The delivery was set for 10:30 P.M. (925). Pearson was held as hostage by Angelo.

Rossi had two of his men tell Angelo that something was wrong with the goods (927). Angelo came to the hotel with Silverio and Pearson. Pearson put a gun to Silverio's back and Flynn, Iacono and Silverio were tied up. Pearson, Rossi and Coralluzzo took the suitcase of cocaine (928). DeLuca did the driving.

The next day, the cocaine was split up into different suitcases and the guns all placed in one suitcase. Everyone (except Angley who had left) received \$500.00 for temporary expenses (930). DeLuca and Browning picked up the luggage at Kennedy Airport and took a cab to the Bronx (931). The others followed in another cab. DeLuca told Pearson they were going to Marilyn Greco's house (933).

At the house, Rossi, Coralluzzo and Pearson went into the bedroom. The cocaine was taken out of the luggage and placed

on the bureau (935). Pearson announced that he would take cocaine instead of waiting for the money.

Jerry Rubin arrived at the house. Pearson had previously dealt narcotics with him (936). Pearson described narcotics deals he had with Peter Cosme in the Bronx (938,946).

Pearson outlined the purported relationship between Rossi, Coralluzzo and Guerra (991). Pearson testified that Guida made deals for Rossi and that the other defendants may not have known about these deals (1005).

Pearson and Guerra had a separate deal between themselves (1008). Guerra told Pearson that his (Guerra's) deal with Rossi was a losing proposition (1010).

Pearson testified that Capotorto, together with Browning and Lepore, ripped off some people from downtown for \$12,000.00. Rossi refused to return the money, saying he was "with Don Carlo." (1017).

Pearson stated that he had been granted complete federal immunity on all his cases and that the Bronx Judge was to be advised of his cooperation (1026,1027).

On cross-examination, Pearson testified that there was no meeting at the home of the mother of Albert Rossi prior to the Flynn rip-off trip (1035). That the men did not sit near each other on the plane in coach section (1037). Further that DeLuca did not attend the Florida meetings about the rip-off. Pearson stated that he did not trust Rossi and Coralluzzo.

Pearson further testified that Angley played no active part in the Flynn rip-off and that Angley did not receive \$500.00 expense money. (1046)

Pearson asserted that the Lucas deal was a rip-off from its inception. (1071) Also, that Rossi didn't give permission for the Serrano deal.

D. JOHN SERRANO

Serrano testified that he was thirty-five (35) years old, resided in Minnesota, and was in federal custody since his conviction on drug conspiracy charges, for which he received a three year sentence of imprisonment. (1104) Formerly, he lived in the Bronx and worked as a dispatcher for a trucking outfit for eight (8) years.

Serrano met Angley in December, 1972, in the Bronx freight yards. (1105) Serrano stated that he had six drug transactions with Angley between December, 1972 and December, 1973. Serrano described the negotiations for the two kilo sale on December 12, 1973, which was aborted. (1109-1116). On the first occasion, Angley did not show up. (1121)

Serrano testified that he did not know Coralluzzo, Rossi, DeLuca, Browning, Flynn, Silverio, Iacono, Capotorto and any of the other alleged conspirators except James Angley. (1130-1134)

E. JESSE MUNIZ

Mr. Muniz testified that he was employed by the DEA for 4½ years and was presently stationed in Los Angeles. In

1973 he was assigned to the New York office (1150,1151). He participated in the Serrano investigation. Muniz stated that Serrano was involved with a confidential informant named Roberto who worked for the DEA (1151).

Muniz testified that Roberto arrived with Serrano at 72nd Street and West End Avenue and was subsequently picked up by Muniz and Bell. (1155) At that time Roberto had a package containing a white powdery substance (1157). The next day on December 11th, Muniz posing as Roberto's partner spoke with Serrano about purchasing two kilos of cocaine (1157). At meeting was arranged for 7:30 P.M. The price was to be \$27,500.00.

On December 12th, Muniz was to meet with Serrano at 9:30 P.M. at the Los Chicos Restaurant at East 149th Street. Muniz and Roberto followed Serrano in his car from that location to the Crosstown Diner on Bruckner Boulevard (1161). Serrano flashed his lights twice. A light colored, blue or tan, Cadillac returned the signal (1161). Muniz asserted that he could identify Angley as the man in the Cadillac (1167).

Muniz made no notes of memos of the events, but he related them to Special Agent Bell who prepared the reports: (1175)

On cross-examination, Muniz admitted that he never saw the kilos of cocaine allegedly involved (1177). The permit permitted Muniz to testify, over objection, that Roberto told him the cocaine was produced. Muniz never spoke to James Angley (1179).

Muniz stated that he was in the rear seat of his car when he observed Angley in the Cadillac making a U-turn (1180). Muniz

never observed Angley in possession of any narcotics (1186). Muniz testified that the only reason he remembered Angley was his profile, receding hairline and high cheekbone (1187). Muniz admitted the person he observed could have been Angley's brother.

The Court permitted the Government to employ improper redirect examination of its own witness (1190, 1194, 1195).

F. JOHN DIGRAVIO

Mr. Digravio was the next witness for the Government. He testified to surveillance involving Thomas Vasta. (1197-1204 and 1255-1276).

G. JOHN SERRANO

Mr. Serrano recalled as a witness identified a Parliament package alleged to contain one ounce of cocaine. He stated that Angley gave it to him (1276). Serrano was unable to distinguish the particular Parliament box from any other cigarette package (1278-1280).

H. JOHN FASANELLO

Mr. Fasanello testified that he was a chemist employed by the Drug Enforcement Administration (1283). He testified that he examined the Government's exhibit 1 and determined that the substance contained cocaine (1285-1286).

On cross-examination, Mr. Fasanello stated that he did not burn any of the cocaine, or put any on a light bulb while

testing it. (1286)

I. JOHN NOLAN

Mr. Nolan, a Special Agent for DEA, testified concerning the Mengrone wiretap tapes. (1292-1293) The Appellant, James Angley, is not mentioned on the tapes except in one instance where Coralluzzo borrowed his car for personal reasons.

After the tapes were heard and motions for severance were made and denied, the Government was permitted by stipulation to introduce airline tickets and hotel reservations relating to the Flynn Miami trip (1383-1389). After that additional tapes were heard. (1391)

J. MARIE MARRERO

Miss Marrero testified about her acquaintance with Rossi. (1406) She identified James Angley as the person driving a car in which Rossi and Coralluzzo were passengers up to a Chinese Restaurant in Yonkers. (1416) Previously, she had met Angley at Rossi's birthday party. (1418)

Miss Marrero stated that she and Susana Sherman stayed at a motel in New Jersey with Rossi and Coralluzzo in November, 1973. (1418)

Miss Marrero identified Joseph DeLuca as a person who came to Susana Sherman's apartment. (1419-1421)

Miss Marrero admitted that at the time of her involvement with Rossi and Coralluzzo she was a prostitute. (1431) She admitted that she was involved in one drug deal

with Rossi in Boston. (1448)

K. ALFONSO M. MARINO and PRISCILLA LONG and JANET SCHWARZ

Mr. Marino, Miss Long and Miss Schwarz were called by the Government to identify and authenticate evidence previously received by stipulation. (1460-1467, 1475-1481, 1482-1497).

L. RUSSEL NEALEY

Mr. Nealey was called to testify motel registration records for the period from November 5th through the 15th or 17th. (1499) The name on the registration was Cathy Spangler. He identified two men as having stayed at the motel, top of the Mast, in the same suite, one in his late twenties and the other in his early thirties with a dark complexion (1504).

M. GEORGE FESTA

Mr. Festa a Special Agent with the DEA, testified that on May 3, 1974, he was present in the United States Attorney's Office together with Albert Rossi. (1532) Rossi, in his presence, dialed a telephone number and spoke to someone named "Joey". (1532) Festa then spoke to the individual and made arrangements to meet with Joseph Camperlingo in Fort Lauderdale, Florida the next day. Festa described his meeting at which he discussed the possibility of bringing 150 kilos of cocaine from Costa Rica into the country. (1537) A tape recording of the conversation was played in open court, over the objection of defense counsel. (1550)

N. JOSEPH CARDOZO

Mr. Cardozo testified that he operated a private limousine service and that he drove a limousine for Rossi and Coralluzzo on several occasions (1608, 1609). Cardozo stated that he picked up two girls and drove from Heights Drive in Yonkers to J.F.K. Airport in Late September, 1973. (1308) At the airport he picked up two men without luggage. They made one stop at Korvette's in Pelham, New York and back to Heights Drive (1610). Ten minutes later, the two girls came out of the house and Cardozo drove them to a department store on Central Avenue called Eastern. He then drove them back home (1611).

O. NICHOLAS MAGGIO

Mr. Maggio was the next Government witness. His testimony is set forth in the brief of Appellant James Capotorto. (1624-1635)

P. JAMES BELL

Mr. Bell a special agent with the DEA, testified that in December, 1973 he was on assignment with Agent Muniz. (1636) He stated that he inspected Roberto prior to his meeting with Serrano and that Roberto did not have any narcotics at the time (1638) Bell did not observe Roberto for two hours thereafter. After Roberto met with Serrano, he returned and handed Agent Bell a Parliament cigarette box containing a plastic bag with white powder inside (1639) He described the chain of custody of the alleged contra-band. (1641-1642)

On cross-examination, Bell stated that Muniz was in

the front seat, passenger side when Roberto was dropped off to meet with Serrano. (1647) Bell did not observe Angley in the bar which Roberto had entered. (1650) Bell stated that Muniz would have had to look across his body to have observed a car making a U-turn on Westchester Avenue. (1654)

On redirect, Bell stated that he had seen Angley parked across the street on that evening. (1656)

On recross, Bell acknowledged that when he and other agents went to arrest James Angley, that Angley's son was originally handcuffed and led away until someone shouted "You got the wrong guy." (1657) On redirect, Agent Bell stated that the agents had difficulty identifying a person who turned out to be Mr. Angley's son.

On recross, Bell conceded that Angley's son was 6 feet tall, 200 pounds, with a full head of hair, no receding hairline and was younger than his father, James Angley. (1683)

Q. HOWARD M. ROBERTSON

Mr. Robertson was the next Government witness. His testimony is set forth in the brief of Appellant James Capotorto. (1687-1702)

At the close of the Government's case motions for acquittal and for severances made on behalf of all defendants individually were denied by the Court. (1734-1828)

II. DEFENSE CASE

A. JAMES ANGLEY

Mr. Angley testified that he is 45 years of age and married, with four children. (1847) His oldest son, Robert was 23. (1848) Mr. Angley further testified that he had been married for 25 years, had been employed in the trucking business for thirty years, and had never been arrested or convicted of any crime. (1850)

In August, 1973, Angley testified that he formed a trucking business in partnership with Ernest Coralluzzo. (1850) Angley testified that he always filed income tax returns. Mr. Angley's W-2 forms were admitted into evidence. (1853)

At the time of his arrest in addition to his own business, Mr. Angley was employed by a firm called Venetian Trucking. (1855)

Mr. Angley testified that he first met Rossi in July, 1973 at a barbeque at Ernest Coralluzzo's home. (1856) Mr. Angley had previously met Mr. Coralluzzo in March of the same year.

The Appellant, James Angley specifically denied ever selling, buying, using or transporting narcotics. (1857) He denied doing any of these things for Albert Rossi or Ernest Coralluzzo. (1857)

James Angley further testified that he went to Florida on September 22, 1973. On September 22, Mr. Coralluzzo called him at work and asked him if he would like to go to Florida for a day or two. (1858) Mr. Angley agreed to go. Mr. Coralluzzo told Angley that someone would pick him up at White Plains Road and Pelham Parkway.

Mr. Angley testified that he had heard that Rossi

took place on trips and specifically testified about trips to Puerto Rico and the Bahamas. (1859)

Angley stated that the first time he heard that the trip to Florida had a criminal objective was on September 23rd, in the afternoon, when he had already arrived in Florida. (1860) He did not hear any discussion on the airplane concerning any planned robbery.

On September 23rd, when Angley heard the plan, he became very upset and told Coralluzzo, "What did you bring me down for? This isn't my thing." Whereupon, Angley made preparations to leave. (1861) Angley left by 6:30 P.M. for the airport and boarded either a 7:03 or 8:00 P.M. flight back to New York. (1861)

Angley denied that he would have gone to Florida if he had known the intended purpose of the trip. Angley paid his own way home, did not receive \$500.00 expense money, was not issued a weapon by Rossi and denied receiving any cocaine as a result of the Florida trip. (1862-1863) On the return trip, Angley bought the ticket in his own name. (1866)

Angley stated that from the time he entered into partnership with Coralluzzo in the trucking business Rossi wouldn't talk with him or answer him if Angley spoke to Rossi. (1863)

Angley testified that on October 25 or 26, 1973, Coralluzzo called him and asked him to go to New Jersey to discuss the trucking business. (1865) Knowing that Coralluzzo was a fugitive, Angley asked if he should contact a lawyer for him. Angley denied being "the eyes and ears" of Mr. Rossi in the narcotics

business. (1865)

Mr. Angley admitted knowing Serrano from the trucking business for about five or six years. Angley had worked for Jack Singer Terminals and Serrano for Blue Fleet Trucking. The two firms have adjacent loading platforms. (1867) He met with Serrano socially and discussed the possibility of handling furniture moving and shipping together. In August, 1973. The discussion was held in a bar located at 149th Street. (1868-1869)

Angley denied ever giving narcotics to Serrano at that time or at any time. (1869)

Angley stated that he started to wear glasses for regular everyday use in January, 1974. Prior to that time, he wore glasses for reading only for about four years. (1869)

On cross-examination, Mr. Angley denied ever giving Anita Coralluzzo eight thousand dollars or ever giving her any money at all. (1876)

Angley testified that after Coralluzzo called him about the Florida trip, he went home, told his wife, and took a cab to White Plains Road and Pelham Parkway. (1880) There he met DeLuca and Browning, neither of whom had he met before. (1881) Next they picked up Pearson and drove to the airport. (1882)

Angley stated that he was unaware that the airline tickets were for phony names and that he never handled the tickets on the trip to Florida. (1885) Angley denied that Coralluzzo offered him \$7500.00 to participate in a cocaine ripoff. (1891)

Angley acknowledged owning a 1963 Chevrolet station wagon and a 1971 Cadillac during the year 1973. (1893, 1894)

The following witnesses were called as character witnesses for the Appellant, James Angley: Frances Artisona, Vincent Beni, Edward Jackson, William Onorato, Dorothy Arimes, Pete Richardson, Seymour Moskowitz, Father Vincent Gorman and James Brown. Each of the witnesses testified that they knew Mr. Angley from the community for several years and that his reputation for truthfulness and veracity was good or excellent. None were aware of the facts of this case, but they knew the nature of the charges. (1910-1936)

B. DOROTHY GRIMES

Miss Grimes also testified about the incident in which the police were about to handcuff Angley's oldest son. (1922) She testified that when the police arrived they stated that they had followed Mr. Angley into the building. The person was actually Angley's son. (1924)

C. VICKI ROSSI

Mrs. Rossi, Albert Rossi's wife, testified as a witness for defendants, Capotorto and Thompson. She testified that Rossi tried to rape her sister, who Capotorto was then dating. (1942) She further testified that Albert Rossi expected to be out of jail in a year, and that he threatened to kill her if she didn't wait for him. (1945) She testified that he told her the Government promised to change his name and give him money for a new life in another state. (1945)

Mrs. Rossi stated that Rossi's reputation for truth-

fulness was bad, that Mr. Rossi had shot at her and her baby and that he was vengeful. (1945, 1947, 1949)

On cross-examination, Mrs. Rossi stated that Rossi hated Angley because Angley took Coralluzzo away from him from Angley and Coralluzzo became partners in the trucking business. (1956)

Defendants Capotorto and Thompson called additional witnesses on their own behalf. Their testimony is set forth in the brief on behalf of Capotorto and Thompson. (1957-1976)

Defendant Steven Crea testified and called witnesses on his own behalf. (1976-2075)

Defendant Joseph Lepore testified and called witnesses of his own behalf. (2076-2154)

Defendants Crea and Joseph Lepore were acquitted of conspiracy charges after trial.

On January 30, 1975, after lengthy deliberation, the Jury found the Appellant, James Angley, guilty. (2838)

POINT I

THE EVIDENCE WAS INSUFFICIENT AS A MATTER
OF LAW TO CONVICT THE APPELLANT OF THE
CRIME OF CONSPIRACY

Prior to the submission of the case to the jury, counsel for the Appellant Angley moved for a verdict of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure. The motion was denied. This was error because a reasonable mind could not fairly conclude guilt beyond a reasonable doubt and the judgment of conviction should be reversed and the indictment dismissed. United States v. Fantuzzi, 463 F.2d 683 (2d Cir. 1972); United States v. Geaney, 417 F.2d 1116 (2d Cir. 1969); United States v. Freeman, (2d Cir. 1974) Docket No. 74-1238 Decided June 7, 1974; United States v. Taylor, 464 F.2d 240 (2d Cir. 1972).

The principal witness against the Appellant Angley was Albert Rossi. Rossi, by his own admission a man prone to violence, a drug abuser, a robber and a drug dealer, testified to a host of criminal activities he engaged in from 1969 until the beginning of 1974 when he was finally confined to federal custody.

Rossi testified that in 1969 and 1970 he dealt in heroin together with the Ricco brothers. In 1971 until the beginning of 1973, Rossi testified that he bought and sold heroin in kilo quantities with James Rizzieri. Although totally unrelated to the period of the alleged conspiracy, this testimony was employed by the Government to establish that Rossi had readily available

sources of narcotic drugs, and was known as a drug dealer.

In 1973 until September 23, 1973 when, Rossi testified, he executed the Flynn ripoff in Miami, the record is void that Rossi dealt or was capable of dealing in narcotic drugs. In March, 1973, Rossi pulled the Sealtest robbery in Long Island; he testified that he didn't have much money then. In April, when Rossi and Coralluzzo were involved in the abortive ripoff of Frank Mathews, no drugs were ever bought or delivered. Rossi's testimony that his source was " Dom Boy" on "Houston Street" was unsubstantiated, and Rossi himself could offer no phone number, address or last name for his purported source. The Mengrone-Lucas was just a further example of an out-and-out ripoff. Rossi insisted that this deal was originally "honorable". The evidence, however, was all to the contrary, particularly Browning's preparation of the pancake mix and the fact that Rossi could not recall who he negotiated with for the heroin he was to have sold Lucas.

The Flynn ripoff was the first act within the period of the alleged conspiracy which was in furtherance of the purpose of the conspiracy, e.g. distribution of narcotic drugs. Rossi version of the preflight meeting is not borne out by Pearson's testimony. Since Rossi did not contact Pearson, DeLuca, Browning, Lepore and Angley, Rossi could not affirmatively state how Coralluzzo induced the different individuals to go on the Florida trip. One thing is clear, however, Angley left Miami prior to the Flynn meetings and prior to the ripoff. Both Pearson and Angley state that Angley did not receive \$500.00 expense money and the Government failed to rebut Angley's assertion that he returned

to New York under his own name.

Rossi's assertions that Angley was compensated for his participation in the venture is not supported by any nonhearsay evidence. When asked if Angley had been paid, Rossi replied: "I believe we gave him three or four ounces of cocaine." The source of his information was never developed. Angley, on the other hand, categorically denied receiving any such compensation.

Rossi's testimony that Angley accompanied Coralluzzo and Rossi to New Jersey when the latter were fugitives was likewise not supported by the evidence. Russel Nealey, who testified regarding the hotel registration, identified only two men fitting the description of Rossi and Coralluzzo as having stayed at the motel in New Jersey.

Rossi's motive to lie regarding Angley's involvement in the narcotics conspiracy was amply demonstrated by his own wife, Vicki Rossi. She testified that Rossi hated Angley, because Angley's trucking business with Coralluzzo took Coralluzzo away from Rossi much of the time. Evidence of Rossi's vengeful nature permeated the entire trial. Even Pearson, who admitted to many dealings with Rossi and Coralluzzo, considered both of them to be untrustworthy.

With the exception of the two December, 1973, deals described by Serrano, any alleged narcotic transactions between Serrano and Angley antedated Angley's acquaintance with Rossi. With respect to the alleged kilo sale on December 12, 1973, both Pearson and Rossi asserted that Rossi never agreed to it. Even if the jury believed that testimony that such a deal had been arranged and that Rossi's car was used without his consent, this transaction would not fit within the Government's theory of the con-

spiracy which was those deals involving Rossi and Coralluzzo.

In the final analysis, the jury's determination as to Angley's involvement in the alleged conspiracy rested upon the testimony about the Flynn ripoff. Despite Rossi's attempts to draw Angley's name into the criminal enterprise, the mere traveling to Miami and the return prior to any affirmative action does not make the Appellant Angley a conspirator.

" There must be some basis for inferring that the defendant knew about the enterprise and intended to participate in it or to make it succeed.

" Mere presence at a site where a narcotics sale has been planned without some showing that the defendant knew of it is not enough to satisfy the fair preponderance test."

United States v. Cirillo, 468 F.2d 1233
(2d cir. 1973)

It is submitted that not only is the non-hearsay evidence insufficient as a matter of law to make Angley a member of the conspiracy by a fair preponderance of the credible evidence, but that, all the evidence, hearsay and non-hearsay, is legally insufficeint to Make Angley a member of any conspiracy involving Rossi and Coralluzzo by proof beyond a reasonable doubt.

POINT II

THE COURT ERRED IN DENYING THE APPELLANT'S MOTION FOR A SEVERANCE PURSUANT TO RULES 8(b) and 14 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

The Appellant moved, prior to trial, for a severance pursuant to Rule 8(b) of the Federal Rules of Criminal Procedure requiring the Government to elect the Count or Counts upon which it wished to proceed to trial. The motion was denied. The motion for severance was renewed during the course of the trial and again denied. This was error and the judgment of the conviction should be reversed. United States v. Kelly, 349 F. 2d 720 (2d Cir. 1965); Drew v. United States, 331 F. 2d 85 (C.A.D.C. 1964); Kotteakos v. United States, 328 U.S. 750 (1946).

At the outset of this case, the Appellant moved for a severance arguing that there had been improper joinder as to the various defendants. In the instant case, one conspiracy was alleged naming 29 defendants and 31 unindicted co-conspirators. The indictment consisted of nine counts, including the general conspiracy count, and eight substantive counts. Appellant, Angley, was named only in the conspiracy count.

In Kotteakos v. United States, Supra, 328 U.S. at 767,

the Supreme Court said:

"The burden of defense to a defendant, connected with one or a few of so many distinct transactions, is vastly different not only in preparation for trial, but also in looking out for and securing safeguard against evidence affecting other defendants, to prevent its transference as 'harmless error' or by psychological effect, in spite of instructions for keeping separate transactions separate."

In the course of the testimony of Albert Rossi, the principal government witness and one of the alleged ringleaders of the conspiracy under the Government's theory of the case, Mr. Rossi described innumerable crimes ranging from assaults, attempted murder, armed robberies, drug transactions involving heroin, cocaine and marijuana beginning in 1970 and culminating in 1974. The cast of characters depicted in these episodes was ever changing and, even taking the evidence in a light most favorable to the Government's position, clearly the vast majority of these individual criminal enterprises did not relate to the Appellant, Angley.

The strongest evidence against Angley is the allegation that he participated in the Flynn rip-off in Miami, Florida. The Government's case consists of the testimony of Rossi and Gary Pearson. Rossi asserted that a meeting was held at his mother's house at which the plan and specifics were discussed prior to the plane trip to Miami.

Pearson, on the other hand, maintained that no such meeting occurred. He asserts that he did not learn the nature of the criminal enterprise until he was in flight, and that neither

Angley or DeLuca participated in that discussion.

Absent Rossi's testimony, there is no evidence to suggest that Angley was aware of the objective of the trip until after his arrival in Florida. It is uncontroverted that Angley returned to New York prior to the happening of any affirmative action relating to the rip-off and that his return trip was made at his own expense and under his own name.

Additional testimony by Rossi dealt with the Lucas-Mengrone rip-off, the attempted rip-off of Frank Matthews, the Guerra's alleged California cocaine operation and Camperlingo's importation of marijuana and narcotic drugs. While each of these alleged conspiracies clearly involved Rossi, they each had an independent synthesis and were in no way connected with the Appellant, Angley.

The situation in this case is materially different and easily distinguishable from United States v. Sperling, 506 F. 2d 1323(1974), where a single large conspiracy to distribute enormous quantities of cocaine and heroin was alleged and proved. In Sperling, it was established that the two principals, Pacelli and Sperling had interlocking networks for the sale and distribution of cocaine and heroin. Pacelli supplied cocaine for resale to Sperling's customers and Sperling, in turn, provided Heroin for resale to Pacelli's customers.

In the instant case, despite Rossi's protestations to the contrary, there is no evidence of any bonafide intent to deliver narcotics in either the Samuels, Lucas or Matthews rip-offs.

These crimes were larcenies plain and simple with the promise of delivery of narcotics employed purely as a ruse to effectuate the thefts.

Aside from the total absence of evidence connecting the Appellant with any of the above ripoffs, it can hardly be argued that the purpose of any of these transactions was to distribute narcotics. The effect of the admission of such evidence served only as a means to establish that Angley was associated with persons whose actions and behavior were generally unlawful.

Mr. Justice Jackson, in his concurring opinion in Krulewitch v. United States, 336 U.S. 440, 454 (1949) wrote:

"A co-defendant in a conspiracy trial occupies an uneasy seat. There generally will be evidence of wrongdoing by somebody. It is difficult for the individual to make his own case stand on its own merits in the minds of jurors who are ready to believe that birds of a feather are flocked together."

Clearly, the strength of the Government's case was substantially stronger against other defendants than against the Appellant Angley. The the circumstances, the refusal of the Trial Court to order a severance under either Rule Eight or Fourteen of the Federal Rules of Criminal Procedure as to the Appellant, was so prejudicial as to require reversal of the judgment of conviction.

POINT III

THE EVIDENCE ADDUCED AT TRIAL FAILED TO ESTABLISH A SINGLE CONSPIRACY. PROOF OF MULTIPLE CONSPIRACIES SOME OF WHICH WERE TOTALLY UNRELATED TO THE APPELLANT WAS PREJUDICIAL AND DENIED THE APPELLANT A FAIR TRIAL.

The Government failed to establish the existence of a single conspiracy beyond a reasonable doubt. At best the proof established a series of smaller conspiracies and as such the conspiracy count should not have gone to the jury. United States v. Miley, (2d Cir. 1975) Docket No. 74-2207-10, 74-2423 Decided March 19, 1975.

In United States v. Sperling, 506 F.2d 1323 (2d Cir. 1974), the Circuit Court gave warning to the Government that henceforth the haphazard linking of multiple conspiracies to form one overall conspiracy with the consequence that large numbers of individuals are tried together would be strongly scrutinized by the Court. The remedy would be the dismantling of the " single conspiracy" into its component parts so that the individual defendants would be spared the prejudicial effects of "spillover" from the more culpable participants.

In the instant case, the linking of unrelated conspiracies in the guise of establishing one large overall conspiracy is most apparent. Taking the evidence with a view most favorable to the Government, the Appellant Angley's involvement is limited to the acquisition and distribution of the Flynn cocaine. There is no evidence whatsoever that Angley was connected with any heroin deals in which either Rossi or Coralluzzo were involved. Nevertheless, the Government was permitted to introduce evidence regarding the manita ripoff, the aborted Mathews ripoff and the Mengrone-Lucas ripoff, all of which dealt with narcotics

or adulterants, with which the Appellant Angley was in no way involved.

This was a trial which consumed over three weeks during which the Appellant was forced to sit through damaging evidence against other members of the alleged overall conspiracy. Taken by itself, the evidence regarding the Samuels deal, the manita ripoff and sale, the Mathews ripoff and and Lucas ripoff in no way constituted evidence referrable to James Angley. He was clearly not a participant in any of these crimes, whether they be considered narcotic deals or plain larcenies. Nevertheless, if these events are allowed to be tied to Rossi's plan to ripoff Franklin Flynn then Angley, under the Government's theory, becomes liable for them as well. This is precisely the kind of case where "(t)he dangers of transference of guilt from one to another across the line separating conspiracies, subconscious or otherwise, are so great that no one can really say prejudice to substantial right has not taken place." Kotteakos v. United States, 328 U.S. 750, 774 (1946).

There is no reason to presuppose that Angley was aware or should have been aware that Rossi had been dealing in or holding himself out as dealing in multikilo quantities of heroin, since there was no evidence presented that Rossi was capable of dealing in any quantity of that drug subsequent to the time Angley's alleged involvement began. In this respect, this case is easily distinguishable from United States v. Bynum, 485 F.2d 490 (2d Cir. 1973, Vacated and remanded on other grounds, 417 U.S. 903 (1974); United States v. Sperling, 506 F.2d 1323 (2d Cir. 1974);

and United States v. Tramunti, (2d Cir. 1975) Docket No. 74-1550 Decided March 7, 1975.

Because of the inherent dangers of the "spillover" effect and the likely transference of guilt, the Appellant was denied a fair trial and the denial of a severance by the trial court constituted error requiring reversal of the conviction.

POINT IV

THE GOVERNMENT'S INTRODUCTION OF THE MENGRONE TAPES WITH THE KNOWLEDGE THAT THE EVENTS DESCRIBED WERE FALSE AND THAT THE TAPES REFERRED TO A RIPOFF AND NOT A NARCOTIC TRANSACTION CONSTITUTED GOVERNMENTAL MISCONDUCT. INTRODUCTION OF SUCH EVIDENCE VIOLATES DUE PROCESS.

During the trial the Government introduced tape recordings of telephone conversations made to and from Peter Mengrone's phone. The conversations involve the machinations of persons involved in the Mengrone-Lucas ripoff. Conversations between Coralluzzo and Mengrone clearly establish that the Lucas deal was a ripoff from its inception with no intention on the part of the Rossi contingent to deliver the "goods". Mengrone, on his end, concocted the fake kidnapping as a means to get Rossi and Coralluzzo to return the \$29,000.00. Any fair reading of the transcripts leaves little doubt that the Lucas deal was never a true or bonafide drug transaction.

Although the Government concedes that the kidnapping never occurred, the Assistant United States Attorney does not dispel the mistaken impression he sought to convey that an actual drug transaction was involved.

It has been held that where the use of false testimony by the Government may have had an effect on the outcome of the trial, that the introduction of such evidence violates due process. In this case, the Government not only introduced such false evidence but knowingly permitted it to go uncorrected. Napue v. Illinois, 360 U.S.264, 3 L.ed.2d 1217 (1959)

POINT V

ALTHOUGH THE COURT HAS DISCRETION TO PERMIT NOTE TAKING BY THE JURY DURING TRIAL, IT IS ERROR TO PERMIT SUCH NOTES IN THE JURYROOM DURING DELIBERATION WITHOUT PRIOR COURT INSPECTION. WHERE THE DEFENSE OBJECTS TO NOTETAKING THE COURT SHOULD ASCERTAIN THAT THE NOTES DO NOT CONTAIN MATERIAL WHICH MAY PREJUDICE DEFENDANT.

In order to protect the defendant's right to confront the witnesses against him and to prevent the jurors from being influenced by the presence of unauthorized materials, any information not introduced at trial should be withheld from the jury and should not be permitted in the jury room. United States v. Paz, 462 F.2d 740, 745-746 (5th Cir. 1972) In Paz books concerning drug trafficking and large scale business carried on by criminal syndicates and the Circuit Court ordered a hearing to determine whether the jurors were influenced hereby.

In the instant case, the trial court permitted the jurors to make notes during the trial and such notes were permitted to be taken into the jury room during the deliberations. At the beginning of the trial, objection to this practice was made by defense counsel for one of the other appellants, which whom Appellant Angley's counsel was deemed to have joined.

Although earlier decisions indicated a growing tendency of permitting jurors to take notes during trial (See, United States v. Carlisi, 32 F. App. 479 (D.C.E.D.N.Y. 1940), the general rule was that permitting note taking was within the sound discretion of the trial judge. Harris v. United States,

261 F.2d 792, cert. denied 79 S.Ct. 1446, 360 U.S. 933 (1958).

Subsequently, it became the practice of the minority of judges who permit notetaking to give cautionary instructions as to the use to be made of the notes in the juryroom. Toles v. United States, 308 F.2d 590, at 594 (9th Cir. 1962).^{*} In light of the the Paz case, however, some trial courts ruled, in their discretion, not to permit the jurors to take notes. United States v. Murray, 492 F.2d 178,192 (9th Cir. 1973). This is a better practice since without inspecting the notes of all the jurors, the court is ill equipped to prevent unauthorized materials from entering the juryroom during deliberations.

Although cautionary instructions were given to the jury in this case, since it is impossible to ascertain that the jurors were not influenced by extrinsic material, a hearing should be ordered. If, upon such hearing, it should appear that there is any reasonable possibility that the jury was so influenced a new trial is required. United States v. Paz, supra.

* In the Harris case, the trial court instructed the jurors as follows:

"I have noted that some of the jurors appear to be making notes. It is perfectly proper for a juror to make notes, but bear in mind they are your notes. They are not a transcript of the case. You can't, for instance, pull them on the other jurors and say, 'See. I got a note of this.'...

"Some of the judges do not allow notetaking at all and others feel that the notes are taken simply as an aid to memory and that the jury understands they are to recall the testimony and use the notes only as an aid to memory, and any juror who takes notes will use those notes only for that juror's assistance in that regard and not as an authoritative thing to show to other jurors. I belong to the latter number of judges, so go ahead and take all the notes you want."

POINT VI

PURSUANT TO RULE 28(i) OF THE FEDERAL RULES OF APPELLATE PROCEDURES, APPELLANT, ANGLEY, HEREBY ADOPTS THE POINTS AND ARGUMENTS OF THE OTHER APPELLANTS INsofar AS THEY MAY HAVE APPLICATION TO THE APPELLANT, ANGLEY.

CONCLUSION

For the above-stated reasons, the Judgment below should be reversed and the case remanded to the District Court with a direction that the indictment be dismissed as to the Appellant or, in the alternative, that the Appellant be granted a new trial.

Respectfully submitted,

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